

State of California
California Occupational Safety and Health Appeals Board
Closed Session Agenda

Government Code § 11126 (a), (c)(3), (e) and (f)

for

Thursday, May 13, 2021

9:30 a.m.

Held on Zoom

To: Members of the California Occupational Safety & Health Appeals Board

From: J. Jeffrey Mojcher, Chief Counsel

Date: April 30, 2021

RE: Closed Session of the Board to be held on May 13, 2021

Pursuant to Government Code section 11126, subdivisions (a), (c)(3), (e) and (f) and the Labor Code sections 6609 and 6620, the Appeals Board will hear the following items in Closed Session. Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

Decisions Of Administrative Law Judges:

(Written decision issued by an Administrative Law Judge. The decision summarizes the evidence received from the Division of Occupational Safety & Health and the Employer, makes findings of fact for all issues involved in the appeal and gives reasons and grounds for the decision. The Board Members review the decision and decide if they will reconsider the ALJ decision on their own motion.)

1449027 ICON West

1334740 Olam West Coast, Inc.

Petitions For Reconsideration:

(The Division of Occupational Safety & Health and the Employer each has the right to petition the Appeals Board to reconsider a decision or order of an Administrative Law Judge. The Appeals Board must decide to grant or deny each petition.)

1310422 Ace Design & Construction, Inc.

1405439 McElroy Metal Mill, Inc.

1306170 Siu's Products And Distributor, Inc.

1398365 Walmart Inc. #5193

Petitions For Reconsideration (Second Review):

1488970 Running Luck Ranch LLC

Orders Dismissing Appeal:

1480202 Precision Castparts Corporation

Orders Denying Leave To File Late Appeal:

None

Matters Pending Reconsideration:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

The following list is intended to inform stakeholders and members of the public of what the Board believes is the issue of most interest to the general public presented in each of the following matters. The issues are listed so as to assist those interested in research or public information, and not litigation, and are not necessarily or exclusively the only issue or issues presented in each matter. The issues identified are not positions of the Board. Further, the Board may add and decide issues not included in the list or decide the matter on other grounds, under authority of Labor Code sections 6620 through 6623.

- 1272378 Andrew Harrison Barnes
Whether Mr. Barnes was/is an employer.
- 1268738 Arizona Tile, LLC.
Whether the hearing should be continued.
- 1141604 Boy Racer Inc. DBA Burning Angel
(Employer's Petition)
Whether adult film performers are employees or independent contractors.
- 1141604 Boy Racer Inc. DBA Burning Angel
(Dosh's Petition)
Whether adult film performers are employees or independent contractors.
- 1246527 Cemex
Whether the settlement in this matter was procured by fraud.
- 316446855 Cybernet Entertainment, LLC, 14-R6D1-0364-0367
Whether adult film performers are employees or independent contractors.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

- 1205077 Hanover R S Construction LLC
Whether the ALJ committed reversible error in evidentiary rulings regarding the alleged injury and illness prevention plan violation and the forklift operations violations.
- 1135350 Hill Crane Service Inc.
Whether Employer violated the safety orders as alleged.
- 1290383 Jafec USA, Inc.
Whether the ALJ correctly decided the Employer was in violation of a safety order, as alleged.
- 1422951 Lineage Logistics
Whether Employer's motion to amend its appeal should be granted.
- 1290766 Millenium Reinforcing
Whether the Employer proved that wearing foot protection would not have prevented the injury. Whether futility is a defense to a personal protective equipment requirement.
- 1199064 SA Recycling
Whether employer established that, the alleged violation was abated at the time of inspection.
- 1303461 SSA Terminals (Oakland), LLC DBA SSA Marine Terminals
Whether Employer violated section 3212(a)(2)(A) as alleged.
- 1153101 Sunview Vineyards of California, Inc.
Whether the Board should reconsider this interlocutory petition. Whether the Division should be required to provide a redacted copy of the complaint to Employer.
- 1251879 Target Stores, Inc.
Whether the employee suffered a serious injury as defined by statute and regulation.
- 1242676 United Parcel Service, Inc.
Whether the cited Employer had an effective IIPP and trained its employees as required.

Pending Litigation:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

Superior Court:

1. MCM Construction, Inc., 34-2016-80002312 (13-R1D2-3851-3854)
2. Key Energy Service, LLC (12004280)
3. Barnard Impregilo Healy, JV, (317134021), CPF 17-515575
4. R N R Construction, Inc., 34-2017-80002632 (1092600)
5. Ashley Furniture Industries, 34-2017-800002750, (1016514)
6. United Parcel Service, Inc. DBA UPS, 34-2019-80003174 (1116529)
7. Shimmick Construction Company, Inc., 34-2019-80003191 (1059365)
8. Process Cooling International, 34-2019-80003220 (1232555)
9. Prestige Painting, 37-2019-00066143 (1367265)
10. Davis Development Company, 34-2020-80003373 (1226084)
11. Vincent Tuomey, RG20061099 (1152851)
12. Golden State Boring & Pipe Jacking, Inc. 34-2020-80003465 (1308948)
13. Shimmick Construction Co., Inc./Obayashi Corp., 34-2015-80002204
(12-R3D1-0781) (315525790)
14. Interline Brands, Inc., CIVDS2021813 (1251604)
15. Shimmick Construction Company, Inc., 34-2020-80003550 (1080515)
16. MWL Solutions, 34-2020-80003549 (1436014)
17. Hampton Tedder Electric, 34-2020-80003562 (1233597)
18. BMW West, LLC, 34-2021-80003574 (1399613)
19. Southern California Edison, 34-2021-80003580 (1320327)
20. Davis Development Company 34-2021-80003586 (1293194)
21. Sierra Forest Products, VCU285853 (1291481)
22. Ventura Coastal, (317808970)

Appellate Court:

1. Lion Farms, LLC, MCV075788 (1070258)
2. Atkinson Construction, LP, 34-2017-80002611, C091705 (317386084)
3. United Parcel Service, B308218, 18STCP03195 (1158285)

Other Items:

1. New and/or interlocutory petitions for reconsideration not filed in time to be agendized.
2. Categorizing the Board's DARs and Denials on the DIR website.
3. Staff attorneys to provide legal analysis, advice and counsel regarding COVID-19 cases.

Orders Of Administrative Law Judges:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

1350138	2K Games, Inc.
1404293	99 Cents Only Stores, LLC
1491405	A Step Ahead Construction, LLC
1372161	Advanced Construction Southwest
1468831	Agritec International LTD
1438027	Alpha Dyno Nobel
1430970	ALS West Coast Logistics
1383244	Ambrit Engineering
1455033	AMD Stone Touch, Inc.
1489248	American Building Supply, Inc.
1359208	American Wood Fibers, Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1499790	Ameripeec, Inc.
1444394	Anthony P. Gil
1493413	Antigua Development, Inc.
1360635	Archibald Sheet Metal Inc.
1497128	Aryzta, LLC
1481494	Atlas Galvanizing LLC
1416272	Beckman Coulter, Inc.
1505020	Benchmark Arts, Inc.
1304010	Berber Roofing, Inc.
1493850	Bottling Group, LLC
1368617	Boudreau Pipeline Corporation
1327905	Bragg Investment Co., Inc.
1452083	Bright Electric Inc.
1443353	Builder Services Group Inc.
1473922	Cardenas Markets, LLC
1485628	Champion Weatherproofing Corp.
1497282	Chi Fung Plastics, Inc.
1413636	Condon-Johnson & Associates, Inc.
1362792	Costco Wholesale Corporation
1353482	CowelCo
1448969	CSP Fiber Services
1474529	Davis Wire Corporation
1447200	Dennis Webb Construction
1487673	Design Synthesis, Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1473105	Duda Farm Fresh Foods
1493649	Edith Frieda Kausch
1436316	Elgorriaga Enterprises, Inc.
1482369	Fancher Creek Packing LLC
1504419	Farmer John Egg Enterprises, Inc.
1434149	Fed Ex Ground, Inc.
1464156	Fieldcore Service Solutions LLC
1399477	Five Crowns, Inc.
1472121	Flory Industries, Inc.
1514408	Fratelli Beretta USA Inc.
1494480	Fresno County Sheriff's Office
1344419	Gardner Trucking, Inc.
1322554	Golden State Fc, LLC
1464994	Green Castle Art, Inc.
1506146	H&W Nor-Cal Builders
1223752	Henkels & McCoy, Inc.
1402396	Hibachi-San, Inc.
1368078	Hollander Homes
1453708	Hollandia Dairy, Inc.
1466543	Horizon Collison Center Inc.
1473803	Humphrey Plumbing, Inc.
1493754	Imperial Landfill Inc.
1490098	Jacob Wizman
1498982	Johnstone Moyer, Inc.
1419478	Joyful Creek Corporation

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1493055	KIK SoCal, Inc.
1407899	Kimco Staffing Services, Inc.
1486116	La County Health Services LAC + USC Medical Center
1312128	Lancaster Burns Construction, Inc.
1121227	LC General Engineering & Constructions Inc.
1476342	LDI Mechanical, Inc.
1379436	LeafFilter North, LLC
1325338	Lee's Imperial Welding, Inc.
1280715	Los Angeles Engineering, Inc.
1463977	Luber Mechanical Corporation
1237433	Mark III Construction, Inc.
1465290	Master's Woodworking, Inc.
1230019	MCH Electric Inc.
1351919	MCH Electric, Inc.
1465448	Medical Environmental Technologies, LLC
1482600	Mi Lindo Guerrero Tortilleria
1497955	Miguel Solorio Enterprises, Inc.
1462285	Mingja Inc.
1375409	NB Baker Electric, Inc.
1475644	O'Brien Steel Erectors, Inc.
1437382	Osteria Mozza
1416453	Pacific Steel Group
1440665	PSMG, Inc.
1366446	Redlands Unified School District
1473675	Redrock Construction LLC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1499252	Renovate & Remodel Contractor
1432955	Ritchie Trucking Service
1471767	Riverside County Sheriff's Department
1488791	Rocky Coast Builders Inc.
1405426	Rolling Green, Inc.
1460276	Rotometals, Inc.
1483044	Ruiz Farm Labor
1007839	Santa Fe Packaging Corp.
1508317	Silvermark Construction Services, Inc.
1441081	SSA Terminals (Oakland) LLC
1472545	SunHarvest Ag Services, Inc.
1506108	SWS Panel and Truss, Inc.
1479289	T. Morrissey Corporation
1396499	Thyssenkrupp Supply Chain Services NA, Inc.
1401936	Timberworks Construction, Inc.
1430956	Transworld International Conversion Stretching,
1514194	Tree of Life Tree Service
1507780	UL Construction, Inc.
1263555	United Testing Corporation
1335446	Universal Protection Service, LP
1498464	Vazquez & Flores Custom Framing, Inc.
1485202	VIP Rubber Company, Inc.
1501972	W.L. Butler Construction, Inc.
1502007	W.L. Butler Construction, Inc.
1514152	Yosemite Bone and Joint, Inc.

Pending appeals involving covid19-related citations:

(The following list consists of pending appeals that involve Covid19-related citations. Find more information about the citations at the [Federal OSHA Website](#). Type the inspection number in a box and click on the submit button.)

1475491	Sutter Bay Medical Foundation
1485198	Alfaro Farm Labor Contractor, Inc.
1472716	Sutter Bay Hospitals
1477632	DL Poultry, Inc.
1475440	Sutter Health - California Pacific Medical Center - Mission Bernal
1483569	Vie de France Yamazaki, Inc.
1484808	Jobsource North America, Inc.
1473542	Jobsource North America, Inc.
1472876	Sutter Health Memorial Hospital Los Banos
1475234	Amazon.com Services, LLC
1473644	Amazon.com Services, LLC
1476240	Overhill Farms, Inc.
1473510	Overhill Farms, Inc.
1475903	Ralphs Grocery Company
1472915	Kaiser Permanente Psychiatric Health Facility - Santa Clara
1474956	Kaiser Foundation Hospital Ontario
1472020	Pitman Family Farms
1473517	Kaiser Foundation Hospital - San Francisco
1474250	Ralphs Grocery Company
1472724	Santa Rosa Police Department
1473654	CHA Health Systems, Inc. / CHA Hollywood Medical Center, LP

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1476536	Harvest Farms
1472737	University of California, Santa Cruz
1482017	Food 4 Less Holdings Inc.
1476202	Ralphs #222
1476044	Ralphs Grocery Company
1474648	Kaiser Foundation Hospitals
1475605	Kaiser Foundation Hospitals Redwood City Medical Center
1474630	Kaiser Foundation Hospitals/Kaiser Permanente - Oakland Med.
1476723	Smithfield Foods Inc.
1474695	Kaiser Foundation Health Plan, Inc.
1479073	Integral Senior Living, LLC
1496706	Morada Produce Company, LLC
1476551	Arden Group, Inc.
1473356	The Regents of the University of California, Los Angeles
1473875	Panorama Meadows Nursing Center, LP
1476073	Kaiser Foundation Hospital
1475159	Driftwood Hayward Operating Company, LP
1478836	Los Angeles County Metropolitan Transportation Authority
1482031	United Staffing Associates, LLC
1473792	Central Valley Meat Holding Company
1476167	Kaiser Foundation Hospitals
1476072	Windsor Vallejo Care Center LLC
1478727	Doctors Medical Center, Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1476882	NorthBay Medical Center
1477009	Lusamerica Foods, Inc.
1483221	CLW Foods LLC
1483678	California Farms Meat Company, Inc.
1477051	Marin General Hospital
1482369	Fancher Creek Packing LLC
1479906	Hayward Sisters Hospital
1484106	DHL Express (USA), Inc.
1475603	Kaiser Permanente Antioch Medical Center
1483240	Stephen H. Smith Farms, Inc.
1482357	H & R Labor Contracting, LLC
1474698	City of Santa Clarita-Santa Clarita Transit
1488121	Apollo Wood Recovery, Inc.
1483438	Mills-Peninsula Medical Center
1483129	Walmart Inc.
1487976	Stevens Creek BMW
1495252	Elkhorn Packing Co. LLC
1482808	Primex Farms, LLC
1477773	Citistaff Solutions, Inc.
1486320	Coldwater Care Center LLC
1477159	Grimmway Enterprises, Inc.
1481574	Daniel C Salas Harvesting, Inc.
1478942	Port City Operating Co LLC

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1493465	Cardenas Market
1479549	Kaiser Foundation Hospitals
1481502	Fremont Healthcare Operating Co, LP
1483898	Chipotle Mexican Grill Inc.
1495407	D'Arrigo Bros. Co. of California
1481860	Carter's Retail Inc.
1486771	Doctors Medical Center, Inc.
1483170	H&B Hospitality LLC
1478378	Kaiser Foundation Hospitals
1483472	California Enterprises Employment, Inc.
1484306	Olam West Coast, Inc.
1480866	State of California, Department of Corrections & Rehabilitation
1485615	OOMA, Inc.
1491837	MV Transportation
1482178	United Parcel Service Inc.
1477528	Tranquility Inc.
1480875	OWB Packers, LLC
1487546	Bevill Vineyard Management
1483601	The Fish Company
1495502	AI Pak Labor Inc.
1478155	Kingston Healthcare Center, LLC
1483470	HR Staffing Solutions, Inc.
1478320	Sutter Bay Hospitals

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1485410 SC Warehouses, Inc.

1489025 Los Angeles Apparel, Inc.

1481220 The Villa Park Orchards Association

1489768 State of California, Dept. of Corrections - Avenal State Prison

1482518 G.L. Mezzetta Inc.

1484564 Integrated Pain Management Medical Group, Inc.

1489371 Frontier-Kemper Constructors, Inc. and Tutor Perini Corporation

1489032 Michael Nicholas Designs, Inc.

1486257 The Kroger Company

1481476 Marin Resource Recovery Center

1504282 Imperfect Food

1490787 Gibraltar Convalescent Hospital Ind. / Del Mar Care Center

1491478 Lucky Farms, Inc.

1488389 Mannington Mills, Inc.

1489305 Calavo Growers, Inc.

1492892 California Agriculture, Inc.

1491024 Grimmway Enterprises, Inc.

1476007 KF Sunray, LLC

1478127 Contra Costa Behavioral Health Services

1489226 Mollie Stone's Market

1499605 United Staffing Associates, LLC.

1473477 A Vidovich Construction, Inc.

1481578 California Prison Industry Authority

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1489284	Tosca Services, LLC
1478754	California Department of Corrections and Rehabilitation
1487741	BSF Fitness, LLC
1488834	Norman Elloway DDS
1481321	Autumn Hills Health Care Center
1491659	Studio City Rehabilitation Center
1483915	Sutter Health
1511137	Southern California Permanente Medical Group
1510890	Kaiser Foundation Hospitals
1492738	Dan Marcus
1495150	Troy Roofing, Inc.
1476839	PIH Health Good Samaritan Hospital
1490971	Santa Clara Valley Transportation Authority
1485894	Sutter Health
1494822	Ciasom, LLC
1491648	Sandhu Orchards, LLC
1492130	Grapes FLC
1485435	Healthcare Services - Encino Hospital, LLC
1483579	Amazon
1493805	Simmons Real Estate, Inc.
1484803	California State Lottery
1494655	Randstad USA LLC
1481021	American Machine & Tool, Inc.

California Occupational Safety & Health Appeals Board
Closed Session Agenda
Posted April 30, 2021

1492283	Aerotek Inc.
1479497	California Department of Corrections & Rehabilitation
1483379	Marin Senior Coordinating Council
1487399	Anaheim Healthcare Center, LLC
1482596	Parkview Operating Company, LP
1499765	Kaiser Foundation Hospitals - San Francisco
1492135	Brutocao Vineyards, Inc.
1500426	WB Powell Inc.
1479039	Armorcast Products Company, Inc.
1497482	Monterey Mushrooms, Inc.
1499522	Advanced Roof Design Inc.
1487717	Millbrae Care Center, LLC
1489597	The Growers Company, Inc.
1490265	Rubicon Bakers LLC
1493068	Kaiser Permanente
1488366	CourtSide Basketball Center
1476402	Northridge Care Center, Inc.

Personnel:

(Issues regarding staff.)

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